

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel. Scott Pruitt, in his
official capacity as Attorney General of Oklahoma,**

Plaintiff,

v.

**KATHLEEN SEBELIUS, in her official capacity as
Secretary of the United States Department of Health
and Human Services; and TIMOTHY GEITHNER,
in his official capacity as Secretary of the United States
Department of the Treasury,**

Defendants.

No. 6:11-cv-00030-RAW

DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE

The defendants, Kathleen Sebelius, in her official capacity as Secretary of the United States Department of Health and Human Services, and Timothy Geithner, in his official capacity as Secretary of the United States Department of the Treasury, by the undersigned counsel, respectfully submit this response to this Court's order of November 16, 2011 (ECF 28), in which this Court directed the parties to show cause "why this litigation should not be stayed pending a ruling on the merits by the United States Supreme Court." The defendants respectfully submit that this case should be stayed pending the Supreme Court's decision in a case that presents the same issue.

1. The plaintiff, the State of Oklahoma, challenges the constitutionality of the provision in the Patient Protection and Affordable Care Act that, beginning in 2014, will require that non-exempted individuals maintain a minimum level of health insurance coverage or pay a tax penalty. *See* 26 U.S.C. § 5000A (the "minimum coverage provision"). The defendants filed

a motion to dismiss the complaint for lack of jurisdiction on March 28, 2011. That motion is pending before the Court.

2. On November 14, 2011, the Supreme Court granted the government's petition for a writ of certiorari in *U.S. Dep't of Health & Human Servs. v. Florida*, No. 11-398. That petition presents the same constitutional question that is presented in this case: whether the minimum coverage provision is a valid exercise of Congress's Article I powers. In addition, the Supreme Court directed the parties to brief the threshold question whether the Anti-Injunction Act bars the suit. The Supreme Court also granted petitions filed by the plaintiffs in the *Florida* litigation that present questions of severability and a constitutional challenge to the Affordable Care Act's amendment to the Medicaid program. See *Nat'l Fed'n of Indep. Business v. Sebelius*, No. 11-393; *Florida v. U.S. Dep't of Health & Human Servs.*, No. 11-400.

3. The outcome of the Supreme Court proceedings in the *Florida* litigation will likely control this case. Accordingly, the defendants respectfully request that this Court hold proceedings in this case in abeyance pending the Supreme Court's decision in *Florida*.

4. Pursuant to Local Civil Rule 7.1(g), the undersigned counsel for the defendants contacted counsel for the plaintiff, Patrick Wyrick, Esquire, and Neal Leader, Esquire, by telephone on November 17, 2011, and asked that the plaintiffs state their position regarding a stay. Mr. Wyrick authorized the undersigned counsel to state that the plaintiffs have no cause why a stay should not be entered. The office of counsel for the defendants is located in Washington, D.C., and the office of counsel for the plaintiffs is located in Oklahoma City, Oklahoma. The distance between the two offices rendered a personal conference infeasible for the purposes of Local Civil Rule 7.1(g).

DATED this 17th day of November, 2011.

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

E. Scott Pruitt
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s/ Joel McElvain
JOEL McELVAIN